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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA : DOCKET NO. 2:06 CR 20022-001
VS. : JUDGE MINALDI
GAYLAND BRUCE HEWITT : MAGISTRATE JUDGE KAY

MEMORANDUM ORDER

Presently before the court is the defendant's Motion to Alter or Amend [doc. 64] Court's Order.¹

This court issued a Judgment [doc. 63] on November 29, 2010, denying the defendant's §2255 motion. In the corresponding Memorandum Ruling [doc. 62], the court noted that a timely response to the Government's Reply had not been filed by Hewitt. Hewitt takes issue with this statement by arguing that he had hand-delivered his response to prison officials on November 12, 2010, therefore the response was timely.

An Order [doc. 53] issued on September 8, 2010, set forth the deadlines for briefs in this matter. In this Order, Hewitt was allowed twenty (20) days following the *filing* of the Government's memorandum *to file* his response. The Government's memorandum was filed on October 22, 2010. Therefore, the defendant's Reply, if any, was to be *filed* no later than November 11, 2010. Since November 11, 2010, was a legal holiday, the Reply should have been filed no later than November 12, 2010.

¹ This motion was docketed as a Motion for Reconsideration.

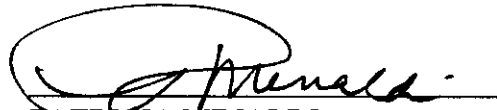
Pro se prisoners' filings are governed by the mailbox rule. Thus, they are deemed "filed as soon as the pleadings have been deposited into the prison mail system." *Spotville v. Cain*, 149 F.3d 374, 376 (5th Cir.1998) (citing *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) and *Cooper v. Brookshire*, 70 F.3d 377, 379 (5th Cir.1995)). The prisoner has the burden of proving that he submitted his action for mailing before the filing deadline. *Price v. Philpot*, 420 F.3d1158, 1165 (10th Cir.2005).

FCI Seagoville was ordered to produce mail logs. These logs were filed on April 12, 2011. These logs indicate that Hewitt deposited a document in the mail, which we will assume was his Reply for the purpose of this motion, on November 15, 2010. To be timely, the Reply should have been filed no later than November 12, 2010. Accordingly, the defendant has not met his burden of proving a timely mailing.

This court, however, will grant the defendant leniency and has considered the merits of the defendant's Reply (Rec. Doc. 60), as if it had been timely filed. The arguments set forth therein are not persuasive and do not change the court's original ruling on the §2255.

IT IS ORDERED that the defendant's Motion to Alter or Amend [doc. 64] Court's Order IS DENIED.

Lake Charles, Louisiana, this 19 day of April, 2011.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE